

to permit the Portfolios to purchase and redeem shares of the Underlying Portfolios.

10. Applicants believe that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Portfolios in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Portfolios and will be consistent with the policies as set forth in the registration statement of the Portfolios.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Portfolio and each Underlying Portfolio will be part of the same "group of investment companies," as defined in section 12(d)(G)(ii) of the Act.

2. No Underlying Portfolio or Other Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Portfolios, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Portfolios relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the board of trustees of a Portfolio, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than

duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40264; File No. SR-CBOE-98-31]

#### Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees.

July 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder notice is hereby given that on June 30, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 15, 1998, the Exchange filed a letter amendment to the proposed rule change ("Amendment No. 1").<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend and add certain fees, as well as renew and amend (i) its Prospective Fee Reduction Program; and (ii) its Customer "Large" Trade Discount Program. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 corrected an error in the original filing regarding the trade match fee reduction for a threshold volume of 925,000 contracts and above, and made other clarifying changes. See letter from Stephanie C. Mullins, Attorney, CBOE to S. Kevin An, Special Counsel, Division of Market Regulation, Commission (July 14, 1998).

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to make certain fee changes and additions, and to renew and amend (i) the Exchange's Prospective Fee Reduction Program; and (ii) its Customer "Large" Trade Discount Program. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and will take effect on July 1, 1998.

The Exchange is amending the following fees: (1) Trade Match Fee will be increased to \$.05 from \$.04 per contract side; (2) Trade Match Report Fees will be changed to \$.0025 per contract side for all matched and unmatched information. Previously the fee was \$.0008 for paper reports per contract side, per copy, for matched and unmatched information; \$.0003 for data transmission per contract side, per pass; and \$.0003 for unmatched report transmission per contract, per pass; (3) CBOE Market-Maker Handheld Terminals Fee will be increased to \$.08 per record from \$.05 per record; (4) DPM Regulatory Fee will be changed to \$.40 per \$1,000 of gross revenue from a flat fee of \$150 per quarter; (5) Dow Jones Booth Fee will be changed to a flat \$300 per month, which previously was \$300 per month for OCC firms and \$625 per month for Non-OCC firms (the fee also formerly included a variable fee for insufficient fee credits for both OCC and Non-OCC firms). The Exchange is proposing to add the following fees: (1) Technology Fee of \$200 per month; and (2) Book Manual Entry Fee of \$1 per order.

The Exchange's Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues currently provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-

to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's market-maker transaction fees, floor broker fees, and member dues will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The program is scheduled to terminate on June 30, 1998 at the end of the Exchange's 1998 fiscal year. The program is proposed to be amended to replace the market-maker transaction fee and floor broker fee reduction with a trade match fee reduction, and to continue the program during the Exchange's 1999 fiscal year, terminating June 30, 1999. The program also is proposed to be amended to increase the volume thresholds at which the discount commences.

The Exchange has decided to amend the name of the program and the fees associated with it because market-maker transaction fees and floor broker fees are not being increased, and the Exchange feels that it is not in the best interest of the financial welfare of the Exchange to give any further discount on those fees. However, the Exchange is increasing trade match fees, and the Exchange feels that to compensate for that increase, during high volume quarters, the trade match fee will be discounted. Additionally, the trade match fee discount is an across-the-board discount, applying fairly to both market-makers and floor brokers.

Specifically, the threshold volume at which the \$.005 trade match fee reduction applies will be 800,000 contracts. Currently, a \$.005 fee reduction only applies to floor broker fees when the volume threshold is between 725,000 and 775,000 contracts. The threshold volume at which the \$.01 trade match fee reduction applies will be 825,000 contracts. Currently the \$.01 fee reduction only applies to market-maker transaction fees when the threshold volume is between 700,000 and 775,000 contracts. Also, there will be a \$.015 trade match fee reduction for a threshold volume of 925,000 contracts and above. Currently, there is no \$.015 fee reduction in the program.

Finally, the member dues fee reduction, which currently ranges from 25% to 75% for volumes ranging from 675,000 to 775,000 contracts, as amended will range from 25% to 100% for volumes ranging from 800,000 to 900,000. The 25% discount will commence at 800,000 contracts, the 50% discount will commence at 850,000 contract, the 75% discount will commence at 875,000 contract, and the 100% discount will commence at 900,000 contract.

The Exchange's Customer "Large" Trade Discount Program currently

provides for discounts on the transaction fees that CBOE members pay with respect to public customer orders for 500 or more contracts. Specifically, for any month the Exchange's average contract volume per day exceeds one of certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to public customer orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The program is scheduled to terminate on June 30, 1998 at the end of the Exchange's 1998 fiscal year. The program is proposed to be amended to provide that the program will continue in effect during the Exchange's 1999 fiscal year and will terminate on June 30, 1999. In addition to renewing the current fee discount percentages under the program, the program is also proposed to be amended to increase by 50,000 contracts all the threshold levels to which the discount rates apply, increasing the minimum threshold level from 600,000 to 650,000, contracts at which the 30% discount rate applies. Additionally, the Exchange proposes to discontinue its Dow Jones Large Trade Discount Program as of June 30, 1998. Dow Jones customer orders will now be included in the CBOE's Customer Large Trade Discount Program. In all other respect the program remains unchanged.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program for Trade Match Fees and Member Dues, and the Exchange's Customer "Large" Trade Discount Program will terminate at the end of the Exchange's 1999 fiscal year, the Exchange intends to evaluate these programs prior to the beginning of the 2000 fiscal year and may renew these programs in the same or modified form for the 2000 fiscal year.

The proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>5</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The CBOE has neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (e)(2) of Rule 19b-4 thereunder.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>8</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submission should refer to File No. SR-CBOE-98-31 and should be submitted by August 24, 1998.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(e)(2).

<sup>8</sup> In receiving this proposal, the Commission considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40262; File No. SR-NYSE-98-15]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Seeking Permanent Approval of the Exchange's Pilot Program Concerning Entry of LOC Orders

July 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 21, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. On July 16, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change to the Commission.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of the procedures for handling limit-at-the-close ("LOC") orders. The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> See Letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE to David Sieradzki, Attorney, Division of Market Regulation, Commission dated July 13, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange requests accelerated approval for the proposal to allow the Exchange's procedures for limit-at-the-close orders to continue on an uninterrupted basis. As noted below, the Exchange's pilot program expires on July 31, 1998. See *infra* note 9 and accompanying text.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The proposed rule change seeks to make permanent the Exchange's pilot program for entry of LOC orders, which was first approved by the Commission on March 3, 1994.<sup>3</sup> A LOC order is one that is entered for execution at the closing price, provided that the closing price is at or within the limit specified. NYSE Rule 13 provides, in part, that "the term 'at the close order' shall also include a limit order that is entered for execution at the closing price, on the Exchange, of the stock named in the order pursuant to such procedures as the Exchange may from time to time establish." The LOC order type has been available, on a pilot basis, for all NYSE-listed stocks since July 1995.<sup>4</sup> Under the original pilot, LOC orders could be entered only to offset published imbalances of market-on-close ("MOC") order<sup>5</sup> and had to be entered by 3:55 p.m. on both expiration and non-expiration days.<sup>6</sup> In addition, on expiration days, LOC orders could not be canceled after 3:40 p.m., except for legitimate errors. On non-expiration days, LOC orders could not be canceled after 3:55 p.m., except for legitimate errors.<sup>7</sup>

<sup>3</sup> See Securities Exchange Act Release No. 33706 (March 3, 1994), 59 FR 11093 (March 9, 1994) ("LOC Pilot Program Approval Order").

<sup>4</sup> See Securities Exchange Act Release No. 35854 (June 16, 1995), 60 FR 32723 (June 23, 1995) (order approving SR-NYSE-95-09).

<sup>5</sup> A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. See NYSE Rule 13.

<sup>6</sup> The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

<sup>7</sup> See LOC Pilot Program Approval Order, *supra* note 3.

In May 1997, the Exchange implemented an amended policy regarding LOC orders to permit their entry at any time during the trading day up to 3:40 p.m. on expiration days, and 3:50 p.m. on non-expiration days.<sup>8</sup> Thereafter, as with MOC orders, LOC orders could not be canceled (except for legitimate errors), and could be entered only to offset published imbalances. LOC orders are subject to the same restrictions regarding order entry and cancellation as are MOC orders, as well as to the additional limitation that LOC orders yield priority to conventional limit orders at the same price.

In June 1998, the Exchange further amended its policy regarding MOC and LOC orders.<sup>9</sup> Under the amended procedures, the deadline for entry of all MOC and LOC orders was set at 3:40 p.m. on all trading days. Thereafter, MOC and LOC orders cannot be canceled (except for legitimate errors), and can only be entered to offset a published imbalance. In addition, the Exchange made several changes to its rules regarding the publication of order imbalances. First, the Exchange now requires publication of all MOC/LOC imbalances of 50,000 shares or more in all stocks on any trading day as soon as practicable after 3:40 p.m. Second, the Exchange includes marketable LOC orders as well as MOC orders in the imbalance publication. Third, the Exchange is now allowing publication of MOC/LOC imbalances of any size between 3:00 p.m. and 3:40 p.m. with Floor Official approval. Finally, an additional imbalance publication will be made at 3:50 p.m. for stock that has an imbalance published at 3:40 p.m.<sup>10</sup> These procedures are part of the current pilot for LOC orders which expires July 31, 1998.<sup>11</sup>

The Commission has commented on the appropriateness of LOC orders in previous releases. For example, in its release approving the original proposal for the creation of LOC orders, the Commission noted that LOC orders could help curb excess price volatility at the close "without diminishing any benefit to investors from trading strategies which rely on MOC orders to

<sup>8</sup> See Securities Exchange Act Release No. 37969 (November 20, 1996), 61 FR 60735 (November 29, 1996) (order approving SR-NYSE-96-21).

<sup>9</sup> See Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (order approving SR-NYSE-97-36).

<sup>10</sup> For a more complete description of the changes to the MOC/LOC program, see Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (order approving SR-NYSE-97-36).

<sup>11</sup> See Securities Exchange Act Release No. 38865 (July 23, 1997), 62 FR 40881 (July 30, 1998), (order approving SR-NYSE-97-19).